

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

**JOHN THOMAS,**

Plaintiff,

v.

Civil Action No. **3:20-CV-3437-L-BH**

**VICKI TERRY and PAMELA  
CADWALADER,**

Defendants.

**ORDER**

On March 17, 2022, the Findings, Conclusions and Recommendation of the United States Magistrate Judge (Doc. 54) (“Report”) was entered, recommending that the court deny Plaintiff’s third Motion for Default Judgment against Pamela Cadwalader (Doc. 49), filed December 6, 2021, and *sua sponte* dismiss with prejudice Plaintiff’s action and sole fraud claim against Ms. Cadwalader for failure to state a claim upon which relief can be granted.<sup>1</sup> No objections to the Report were filed, and the deadline for asserting objections has expired.

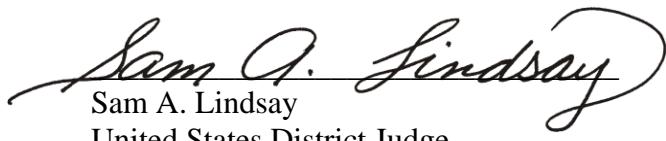
Having considered the pleadings, Motion for Default Judgment, the file, Report, and record in this case, the court determines that the magistrate judge’s findings and conclusions are correct, and **accepts** them as those of the court. Although Plaintiff has not previously amended his pleadings, he did not file objections to the Report or seek leave in response to the Report to file an amended complaint. Further, as correctly noted by the magistrate judge, the fourteen-day period for responding to a magistrate judge’s recommendation that claims be dismissed *sua sponte* has been held to provide a plaintiff with adequate notice and opportunity to respond when, as here, the

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<sup>1</sup> Both Plaintiff and Ms. Cadwalader are proceeding pro se. Although Plaintiff is representing himself and previously moved to proceed *in forma pauperis*, he paid the case filing fee on December 6, 2020. Plaintiff then voluntarily dismissed Vicki Terry from this action on December 2, 2021. See Docs. 47, 48.

magistrate judge's Report clearly states that the plaintiff has fourteen days to respond to the recommended dismissal of claims after being provided with a copy of the Report.<sup>2</sup> Accordingly, the court **denies** Plaintiff's third Motion for Default Judgment against Pamela Cadwalader (Doc. 49) and, pursuant to Federal Rule of Civil Procedure 12(b)(6), the court *sua sponte* **dismisses with prejudice** Plaintiff's action and sole fraud claim against Ms. Cadwalader.

**It is so ordered** this 19th day of April, 2022.



Sam A. Lindsay  
United States District Judge

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<sup>2</sup> See Report 10 & n.8; see also *Alexander v. Trump*, 753 F. App'x 201, 208 (5th Cir. 2018) (concluding that the district court did not err in dismissing the plaintiff's claims based upon the magistrate judge's *sua sponte* recommendation; the plaintiff had "both notice and an opportunity to respond" because the magistrate judge's recommended dismissal of the plaintiff's claims "clearly stated that [he] had fourteen days to object to [the] recommendation.") (citing *Magouirk v. Phillips*, 144 F.3d 348, 359 (5th Cir. 1998), for the proposition that "the magistrate judge's recommendation put habeas petitioner on notice of procedural default issue, and objection period allowed petitioner opportunity to respond, such that district court could raise issue *sua sponte*.").